



FERC Rules PURPA Supports Net Metering

Connecting to the Grid

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by Chris Cook (commentary)

On June 6, 2005, the Federal Energy Regulatory Commission (FERC) issued an enforcement order requiring an Iowa electric cooperative to provide simple net metering to an Iowa farmer with a small wind-energy system. This new ruling (Docket No. EL05-92-000) is the latest decision in seven years of litigation between the farmer, Greg Swecker, and his utility, Midland Electric Cooperative. The net metering case has been before FERC on several occasions, as well as the Iowa Utilities Board, lower state courts, federal court and the Iowa Supreme Court.

In the penultimate decision by the Iowa Supreme Court, the Court overturned its previous ruling that supported a state district court decision ordering Midland to provide net metering to its customers. In overturning its support for the lower court, the Iowa Supreme Court noted that the issue of net metering carried with it great policy concerns, and that FERC was the appropriate tribunal to decide whether net metering fit within the requirements of the Public Utility Regulatory Policy Act (PURPA).

FERC's recent decision has removed all doubt from that issue.

"Requiring Midland to offer net metering to Mr. Swecker and other similarly situated QFs will ensure that a principal purpose of PURPA will be met, i.e., encouraging alternative sources of energy and reducing the nation's dependence on fossil fuels," FERC ruled. "Offering net metering to small wind-powered facilities, moreover, is consistent with the provisions of PURPA that ensure that utilities do not pay more than the incremental cost of power, while ensuring that wind-powered facilities are paid an avoided-cost rate for electricity sold from their QFs."

Midland is not a state-regulated utility and therefore falls outside of the jurisdiction of the Iowa Utilities Board, which requires utilities under its authority to offer net metering to their customers. Midland had argued before FERC that the Commission had no jurisdiction over Midland's decisions with respect to net metering, but also argued in state court that only FERC could rule on the matter. That reasoning did not sit well with the FERC, which noted that it was "disturbed by Midland's arguing to us that its dispute with Mr. Swecker should be resolved in state fora, and then arguing in state fora that PURPA preempted the state legislature from requiring Midland to enter into a net metering arrangement."

FERC's decision constitutes a tremendous personal victory for Swecker, who almost single-handedly succeeded in bringing net metering to his cooperative. Nearly all of his filings with

FERC and with the courts were pro se. Furthermore, Midland disconnected his electricity service twice during the seven years of litigation.

FERC indicated its concern with the animosity shown by the utility toward a small generator by adding, "We cannot help but note that Midland has used the legal process to thwart efforts to compel it to comply with PURPA for seven years, with a long history of using every means at its disposal to avoid its obligation to purchase from Mr. Swecker's small wind-powered QF."

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